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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

IDA FOSTER, Plaintiff and Appellant, v. ALAMEDA HEALTH SYSTEM, et al., Defendants and Respondents.	A142359, A142981 (Alameda County Super. Ct. No. RG14716451)

Appellant Ida Foster appeals from orders sustaining demurrers to her lawsuit without leave to amend against three healthcare providers, Alameda Health System, Sutter East Bay Hospitals dba Alta Bates Summit Medical Center (Alta Bates), and THC Orange County, Inc. dba Kindred Hospital San Francisco Bay Area (Kindred), and directing dismissal of the action. We see no error and will affirm.

I. BACKGROUND

Appellant filed a pro se complaint on a Judicial Council form for medical malpractice against Alameda Health System, Alta Bates, and Kindred.[1] She sued as "Ida Foster for Jefferson Miles, Deceased," alleging that decedent Miles "[s]uffered poor treatment of the wound put on his back by Alameda County Medical from

[1] Although the names of these defendants were listed erroneously in the caption of appellant's complaint as "Alameda County Medical," "Summit Medical," and "Kendred Hospital," each entity appeared to defend in the action, and appears as a respondent here on appeal, by its correct name.

Summit Medical, and exposed to affections and loss of life at Kendred Hospital." Appellant claims she filed her complaint on "February 11, 2012" (*sic*.), by depositing it in the Superior Court's drop-box, but that due to internal court processing delay the complaint was not file-stamped until "March 6, 2012" (*sic*.).[2]

Alta Bates, Alameda Health System and Kindred each appeared and filed a demurrer on several grounds, including that the complaint was time-barred under the applicable statute of limitations, that appellant lacked standing to assert a cause of action for Miles, and that the complaint was fatally uncertain, and additionally, in the case of Alameda Health System, that appellant failed to file her complaint within six months of notice of rejection of her administrative claim as required by Government Code section 945.6, subdivision (a) (1).

To support its demurrer, Alameda Health System filed a request for judicial notice of various facts, including that it is a public entity and that it rejected Foster's administrative claim on May 11, 2012. Appellant filed "objections" to all three demurrers, but failed to contest the tentative rulings granting them and did not oppose Alameda Health System's request for judicial notice. The court granted the request for judicial notice as unopposed.

On June 6, 2014, all three demurrers were sustained. The court sustained the demurrer of Alameda Health System without leave to amend and ordered dismissal as to it, but granted leave to amend with respect to Alta Bates and Kindred, setting a deadline of June 25, 2014 to file an amended complaint. In granting Alameda Health System's demurrer, the court noted that appellant's opposition failed to address Government Code section 945.6, subdivision (a). The date of rejection of her administrative claim having been established by judicial notice, it saw no basis for granting leave to amend.

In its orders granting the demurrers of Alta Bates and Kindred, the court identified with particularity the factual issues appellant needed to address to state a viable cause of action against them. Specifically, the court directed appellant to allege, if she could,

[2] Appellant appears to have meant 2014, since the copy of the complaint contained in the record is filed stamped with the date of March 6, 2014.

(1) facts constituting a claim for professional negligence; (2) dates on which the underlying conduct and resulting injury occurred; (3) facts as to the discovery of such injury; (4) facts showing appellant's compliance with Code of Civil Procedure section 364, the notice of claim statute applicable to Alta Bates; and (5) facts showing whether appellant had standing to bring the action on Miles' behalf. Appellant filed a timely first amended complaint on June 25, 2014.

Alta Bates and Kindred each filed a second demurrer, arguing that appellant's amended complaint failed to rectify the problems with the original complaint. Appellant did not file an opposition to either of these renewed demurrers. After a hearing on August 15, 2014, the trial court sustained them without leave to amend and directed dismissal of the entire action.

In granting the second round of demurrers by Alta Bates and Kindred, the court noted as follows: First, whether appellant brought suit for wrongful death as the personal representative of Miles' estate remained unclear in the amended complaint, but either way she was not authorized to sue. Second, appellant's amended complaint was time-barred under the applicable statute of limitations, Code of Civil Procedure section 340.5, for failure to file within one year of appellant's discovery of the injuries suffered by Miles. Third, with respect to Alta Bates, appellant failed to give at least 90 days' notice of her intention to commence the action as required by Code of Civil Procedure section 364. Finally, permitting further leave to amend would be futile, since appellant failed to demonstrate that she could amend the complaint to overcome any of these deficiencies.

On July 8, 2014 and September 11, 2014, respectively, appellant filed a notice of appeal from the order sustaining the demurrer of Alameda Health System and directing dismissal of the complaint as against it, and a notice of appeal sustaining the demurrers of Alta Bates and Kindred and directing dismissal of the action in its entirety.[3] We consolidated these two appeals on our own motion on January 29, 2015.

[3] Although no judgment was entered, the orders sustaining the demurrers and dismissing the action have the same effect as a judgment and are therefore appealable. (*Daar v. Yellow Cab Co*. (1967) 67 Cal.2d. 695, 698–699.) The appeal of the court's

II. DISCUSSION

In appellant's four-page opening brief on appeal (she filed no reply brief), she describes in a rambling, barely coherent narrative a series of events beginning on September 1, 2011, when Jefferson Miles apparently suffered a fall, and ending with Miles' death on February 19, 2012.

Specifically, appellant avers that Miles was admitted to "Alameda County Medical" on September 1, 2011 and treated "for a fall"; that "[a]fter treatment he was released" in October 2011 to Fruitvale Nursing Home "with . . . large open wound on his back," a wound he allegedly did not have upon admission to "Alameda County Medical"; that "Fruitvale Nursing home and Kindred was [*sic*] not equipped with the emergency room and Jefferson Miles was harmed and suffered in not getting" proper treatment; that in January 2012 Miles was transferred to "Summit Medical," which wanted him released and "retaliated in his treatment" and "caused harm to the wound to get him released" and "made the wound . . . grow larger than ever . . . ."; and that, in February 2012, "Kendred transported [Miles] abruptly to their facility[,] causing [the] harm of exposing him to the deadly surgery of the large open wound[,] effecting [*sic*] suffering [and] immediate death . . . ."

This set of factual allegations appears to be roughly consistent with the allegations in appellant's amended complaint, although in her brief appellant provides only one citation to the record—to two pages of medical documentation showing what appears to be an image depicting Miles' wound—and that citation is of no assistance to us in assessing whether her complaint or amended complaint alleges sufficient facts to survive demurrer. The absence of citations to the record violates California Rules of Court, rule

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June 6, 2014 order granting the demurrer of Alameda Health System was premature, since only one order was entered, on August 15, 2014, dismissing the entire action. We will treat the court's June 6 order sustaining Alameda Health System's demurrer (which is not itself appealable) as implicitly incorporating the court's later order directing dismissal of the action in its entirety. (See *Orange Unified School Dist. v. Rancho Santiago Community College Dist.* (1997) 54 Cal.App.4th 750, 756 ["premature appeal [may be saved] by deeming an order sustaining a demurrer to incorporate a judgment of dismissal" entered later as to all parties].)

8.883, subdivision (a)(1)(B), and, on its own, warrants the striking of her brief, but she presents so little substance that we need not do so. To the degree we can make out what appellant complains about on appeal without the aid of record citations, we gather she contends her case "was just dismissed" and there was "no hearing or response of the complaint." The case was dismissed, of course, but it is plainly not accurate that there was no response or hearing.

Another even more fundamental deficiency in the appeal is that appellant presents no developed legal argument, in violation of California Rules of Court, rule 8.883, subdivision (a)(1)(A). For legal authority she cites a single statute (Code Civ. Proc., § 335.1), the two-year statute of limitations for an action for "assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another," without explaining why she cites it. Here, she fails to address the trial court's explanation that, on the face of her amended complaint, it is evident she knew of the circumstances she now alleges at or about the time those events occurred, and thus a one-year from discovery limitations period applies to her medical malpractice claims against these health care providers, not the more general two-year statute for wrongful death actions. We agree with the trial court's reading of appellant's allegations and its analysis of this issue. Her action is time-barred under section 340.5 of the Code of Civil Procedure, regardless of whether it was filed in February or March 2014. (*Kleefeld v. Superior Court* (1994) 25 Cal.App.4th 1680, 1684.)

Beyond appellant's apparent effort to raise a statute of limitations issue without developing any legal argument or addressing the basis of the trial court's ruling against her, we cannot tell what else she assigns as error and why any such error might be cognizable on appeal. When error is not brought to our attention, we have no obligation to ferret it out. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived."]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) The orders under review here are entitled to a presumption of correctness on

appeal (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564), and appellant has done nothing to overcome that presumption. While appellant's unrepresented status no doubt explains the deficiencies in her appeal, it does not excuse them. (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [" ' "[T]he in propria persona litigant is held to the same restrictive rules of procedure as an attorney" ' "].) The fact that she is proceeding without the assistance of an attorney does not exempt her from the rules of appellate procedure or relieve her of her burden on appeal. Those representing themselves are afforded no additional leniency or immunity from the rules of appellate procedure simply because of their propria persona status. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.)

III. CONCLUSION AND DISPOSITION

We affirm the dismissal of this action with prejudice. Each party shall bear its or her own costs.

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Streeter, J.

We concur:

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Ruvolo, P.J.

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Rivera, J.